FILED: April 10, 2000

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		**SUPERIOR COURT**
EDWARD GAREAU, JR. d/b/a BONNIE AND CLYDE'S	:	
Plaintiff	:	
V.	:	**C. A. No. PC 97-5455**
JEFFREY GREER, in his capacity as ACTING LIQUOR CONTROL ADMINISTRATOR, et al.	:	
Defendants	:	

DECISION

ISRAEL, J. The plaintiff is the operator of a retail beverage business called "Bonnie and Clyde's" in the Town of Smithfield. The defendants are the acting liquor control administrator in the department of business regulation of the State of Rhode Island and the board of license commissioners of the Town of Smithfield. The plaintiffs had held a Class BV retail beverage license issued by the town pursuant to G.L. 1956 (1998 Reenactment) §3-7-7 until November 1996. At that time he appeared before the town council of the Town of Smithfield sitting as a board of license commissioners, the local licensing authority, seeking to renew his license. He requested that the local licensing authority waive the requirement that he have a kitchen separate and apart from the bar area. The requirement of such a kitchen results from the combined application of Regulations 7 and 28, promulgated by the department of business regulation, pursuant to §3-5-20. The board declined to waive the requirement and the department of business regulation on appeal upheld the local authority's decision.

Section 3-7-7 provides in pertinent part that: "A retailer's license, Class B shall be issued only to a duly licensed bona fide tavern keeper or victualer . . ." The plaintiff does not claim that he is a

tavern keeper. He held his license as a victualer. Section 3-1-1 defines a "victualling house" as "any shop or place where a substantial part of the business is the furnishing of food for consumption at the place where it is furnished."

Regulation 7 provides in pertinent part: "An applicant for a BV alcoholic beverage license may be granted a license subject to, but not limited to, the following terms and conditions:

(a) The licensee shall not be issued any such license until such time as the restaurant (kitchen) (parentheses in original) has been stocked, received a certificate of occupancy from the local building official, and has been inspected and approved by the Department of Health."

Regulation 28 defines "kitchen-retail" as follows: "A room or area in which food is cooked and prepared, constituting a room which is separate and apart from the bar area, which shall at all times meet the minimum requirements of the Department of Health." (Emphasis supplied).

The defendant liquor control administrator argues that these regulations were duly promulgated pursuant to statutory authority and, accordingly, enjoy a presumption of regularity, citing Great American Nursing Centers v. Norberg, 567 A.2d 354 (R. I. 1989) and cases cited therein. The administrator is, of course, correct, and the plaintiff does not deny the department's authority nor does he challenge the existence of the presumption.

The plaintiff argues that the presumption is overcome because the regulations requiring separate kitchens in class BV licensed establishments are arbitrary and capricious when they are applied for the first time to license holders, who have operated under such licenses for many years without any separate kitchens. Implicit in the plaintiff's argument is the proposition that the holder of a Class BV license enjoys "some of the aspects of a property right." Beacon Restaurant, Inc. v. Adamo, 103 R. I. 698, 705, 241 A.2d 291, 294-95 (1968). There are enough of those aspects as to prohibit the State from

depriving the holder of a duly issued license of the renewal of that license without constitutional due process.

The plaintiff does not argue that the regulations were not promulgated in accordance with procedural due process. He does not question the authority of the department to have issued the regulations. Nor does he argue that there is no rational connection between the regulations and the governmental objective of preserving public health in places where food is furnished for on-site consumption. He also does not contend that the regulations single him out for application, while other license-holders in his class are exempt or immune from their application.

His argument seems to be that one of the aspects of the property right he enjoyed prior to November 1996 was the right to sell beverages at retail pursuant to his license, while he sold food for consumption on his premises, even if it was prepared in a kitchen which was not separate and apart from the bar area in his premises. In colloquial parlance he is claiming a "grandfathered" right which survived the promulgation of the regulation. In a form of business so intensively and comprehensively regulated as the retail sale of alcoholic beverages, the Court can comfortably rule that no license-holder is entitled to claim a constitutionally-protected property interest in the manner in which he carries on the sale of food on his premises. There is another form of retail beverage license, Class C, available to the plaintiff, if he does not wish to comply with the regulations pertaining to food service. He has not been totally denied all use of his premises for the service of alcoholic beverage drinks. There is no deprivation of "property" here without due process.

The court has carefully considered the plaintiff's argument that "basic principles of equity" require that his license be renewed, notwithstanding his failure to comply with the regulations. See DeFalco v. Vocola, 557 A.2d 474, 476 (R. I. 1989). In that case, unlike here, the licensing authority, itself, had frustrated the license-holder's ability to comply with a condition of the issuance of the license.

> "The town of Johnston attempted to obstruct his efforts to demolish and reconstruct his restaurant and thereafter attempted to deny him a renewal of his license on the ground that he did not have an occupancy permit. This has placed DeFalco in an untenable position. Equitable principles should preclude placing this individual in such a situation by the municipal authority and by the liquor control administrator." Id.

Even a cursory reading of DeFalco shows that it declares no equitable consideration which should bar the denial of this plaintiff's renewal. Nothing this town or the liquor administrator in this case have done would obstruct the plaintiff from complying with the requirements of these regulations, as has every other holder of Class BV licenses, according to the uncontradicted and unimpeached finding of the departmental hearing officer after full hearing. Apparently, what makes the plaintiff's situation unique is that he is the only license-holder who refuses to meet reasonable public health standards because he thinks it costs too much. Equity should not be invoked to relieve a party from the consequences of a self-inflicted wound.

The decision of the director of the department is affirmed. The ninety day period in that decision for compliance by the plaintiff with Regulations 7 and 28 will commence upon entry of a final judgment, to be submitted by the defendants upon notice to the plaintiff. The stay previously entered is vacated. The prayers of the plaintiff's complaint for declaratory judgments are denied and dismissed.